

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

THOMAS CHRIS DODGE;

Johnson County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2012-SW-21

TO: Chris Dodge
Tirefly
4506 Blackhawk Avenue
Parnell, IA 52325-9765

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Thomas Chris Dodge (Chris Dodge) for the purpose of resolving violations related to the illegal stockpiling of waste tires. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Mark Heiderscheit, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Atlantic IA 52353-1623
Phone: 319-653-2135

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515-281-8889

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455D.23, which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D and any rule adopted pursuant to this chapter; and Iowa Code sections 455D.22 and 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Thomas Chris Dodge (Chris Dodge) is in the business of collecting and disposing of waste tires. Chris Dodge collects the waste tires from businesses and individuals and stores the waste tires at a rented property at 4506 Black Hawk Avenue, Parnell, Iowa. The owner of the property is Ronald Schintler.
2. In May of 2010, Chris Dodge made inquiries to the DNR in regard to the regulations relating to the hauling and storing of waste tires.
3. On July 23, 2010, DNR Field Office #6 received a complaint in regard to waste tires stored at a property in Parnell, Iowa. On August 6, 2010, the DNR investigated the complaint and determined that the property is owned by Ronald Schintler. DNR found that more than 500 waste tires were being stored at the site. A letter was sent to Mr. Schintler on August 27, 2010 notifying him that the applicable law limits the storage of waste tires without a waste tire storage permit to no more than 500 unless the owner or operator is a licensed auto salvage yard, in which case up to 3,500 waste tires may be stored.
4. On September 10, 2010, the DNR issued a letter to Ronald Schintler notifying him that the DNR had been contacted by Chris Dodge, who acknowledged that he was the lessor of the Parnell property and that Mr. Dodge was operating the used tire collection business.
5. On September 16, 2010, DNR Field Office #6 received a complaint in regard to the stockpiling of waste tires at the property at 4506 Blackhawk Ave., Parnell. The complaint was investigated on September 23, 2010 and the property was determined to have less than 500 waste tires and therefore be in compliance with Iowa law. Chris Dodge was supplied with a copy of the applicable rules.
6. On May 25, 2011, DNR Field Office #6 investigated complaints of waste tire stockpiling at the Parnell property. It was determined on that date that Chris Dodge was in violation of the 500 waste tire limitation. Mr. Dodge was contacted and he indicated that his normal tire disposal outlet, Granuband in Macon, Missouri, was closed due to a fire and he had been unable to ship waste tires to them. Field Office staff confirmed the closure. A Notice of Violation was issued on June 10, 2011 directing Mr. Dodge to cease accepting tires and to submit a plan by June 30, 2011 detailing how he would reduce the waste tire stockpile to below the legal limit of 500 tires.
7. From July of 2011 through November of 2011, DNR Field Office #6 continued to inspect the property and communicate with Chris Dodge. Nothing changed at the property and additional Notices of Violation were issued. A plan of action was not submitted by Chris Dodge during this period.
8. On December 1, 2011, Chris Dodge submitted a letter to the DNR. The letter indicated that three loads of tires had been removed from the site for disposal in October and

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November 2011. Mr. Dodge proposed to reduce the waste tires by 500 tires every two weeks through June of 2012.

9. On March 29, 2012, DNR personnel inspected the Chris Dodge property and met with Mr. Dodge. It was determined that the waste tire cleanup was not proceeding as proposed. The DNR calculated that there were approximately 4,500-6,500 tires at the site. On that date, the DNR received an updated plan from Chris Dodge indicating that all illegally stored tires would be removed by October 1, 2012.

10. Ongoing negotiations between the DNR and Chris Dodge have led to a determination that the waste tire cleanup cannot be completed prior to the spring of 2013.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455D.11(4) provides that the DNR shall develop rules for waste tire stockpiling facilities. Iowa Code section 455D.11(5) provides that the DNR shall issue permits to qualified stockpiling facilities. Pursuant to 455D.7, the Environmental Protection Commission (Commission) shall adopt rules necessary to implement Chapter 455D. The Commission has adopted 567 IAC Chapter 117 relating to the management of waste tires.

2. Pursuant to Iowa Code section 455D.11B and 567 IAC 117.4(1)"a", an owner or operator of a waste tire collection site shall obtain a permit from the DNR prior to operation of the site. Pursuant to Iowa Code section 455D.11(1)(d), a "tire collector" includes a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires. The facts set forth above establish violations of these provisions.

V. ORDER

THEREFORE, the DNR orders and Chris Dodge agrees to the following:

1. By January 1, 2013, Chris Dodge shall have no more than 2,500 waste tires stored at the property at 4506 Black Hawk Avenue, Parnell, Iowa. All tires removed shall either be sold for reuse or delivered to a legal end user of waste tires. Records shall be maintained of all tire shipments or sales from the site and these records shall be submitted to the DNR on a monthly basis.

2. By April 1, 2013 Chris Dodge shall have no more than 500 waste tires stored at the property at 4506 Black Hawk Avenue, Parnell, Iowa. All tires removed shall either be sold for reuse or delivered to a legal end user of waste tires. Records shall be maintained of all tire shipments or sales from the site and these records shall be submitted to the DNR on a monthly basis through June of 2013.

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3. Prior to April 1, 2013, Chris Dodge shall contact the DNR and schedule a site inspection to occur between April 1st and April 15th, 2013.

4. For all used tires intended for resale, Chris Dodge shall keep such used tires separated from waste tires and shall store them in a manner which allows for a clear visual distinction between waste tires and used tires stored on-site.

5. Beginning April 15, 2013, Chris Dodge shall pay a stipulated penalty of \$1,000 per month for each month until the waste tire stockpile at 4506 Black Hawk Avenue, Parnell, Iowa has been reduced to less than 500 waste tires.

VI. PENALTY

1. Iowa Code section 455D.25 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for the waste tire stockpiling violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with stipulated penalties. The administrative penalty is determined as follows:

Economic Benefit – Chris Dodge has achieved an economic benefit from the violations documented herein. The illegal stockpiling of waste tires results in the avoidance of time, labor and disposal costs. Waste tire disposal costs in Iowa are generally in excess of \$1.00 per waste tire. Chris Dodge has received payment for the acceptance of waste tires but has avoided the related disposal costs. The stipulated penalties contained herein have been calculated with consideration of this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal stockpiling of waste tires provides a refuge for mosquitoes and vermin. The stockpiling of waste tires presents a threat of fire which would result in air quality violations and potential groundwater contamination. The stipulated penalties contained herein have been calculated with consideration of this factor.

Culpability – Chris Dodge has been given prior notice and the opportunity to clean up his property and stop the illegal stockpiling of waste tires. Despite such notice, Mr. Dodge has failed to achieve compliance. The stipulated penalties contained herein have been calculated with consideration of this factor.


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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Chris Dodge. For that reason Chris Dodge waives his rights to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455D.25. Compliance with sections V.1-V.4 of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 19th day of
September, 2012.



CHRIS DODGE

Dated this 15th day of
September, 2012

Field Office #6; V.L.C;